

**Executive Summary – Enforcement Matter – Case No. 46148**

**Azteca Milling, L.P.**

**RN102166758**

**Docket No. 2013-0265-IWD-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

IWD

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Dawn Corn Milling Facility, located on the west side of Farm-To-Market ("FM") Road 809, approximately 500 feet north of the intersection of FM Road 809 and FM Road 1062, Deaf Smith County

**Type of Operation:**

Grain milling operation

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

**Texas Register Publication Date:** June 14, 2013

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$56,000

**Amount Deferred for Expedited Settlement:** \$11,200

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$1,260

**Total Due to General Revenue:** \$43,540

Payment Plan: 35 payments of \$1,244 each

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Satisfactory

Site/RN - Satisfactory

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2011

**Executive Summary – Enforcement Matter – Case No. 46148**

**Azteca Milling, L.P.**

**RN102166758**

**Docket No. 2013-0265-IWD-E**

***Investigation Information***

**Complaint Date(s):** November 29, 2012

**Complaint Information:** A complaint was received alleging the wastewater system and milling operation was creating odor and dust conditions.

**Date(s) of Investigation:** December 14, 2012

**Date(s) of NOE(s):** January 25, 2013

***Violation Information***

1. Failed to maintain the biochemical oxygen demand 5-day ("BOD<sub>5</sub>") permitted application rate of 100 pounds per acre per day ("lbs/acre/day"). Specifically, the BOD<sub>5</sub> application rates for this Facility from September 2011 through August 2012 exceeded the permitted limit and are reported as: 397.63 lbs/acre/day for September 2011, 297.19 lbs/acre/day for October 2011, 497.83 lbs/acre/day for November 2011, 336.72 lbs/acre/day for December 2011, 633.05 lbs/acre/day for January 2012, 520.85 lbs/acre/day for February 2012, 222.92 lbs/acre/day for March 2012, 7,218.43 lbs/acre/day for April 2012, 1,106.73 lbs/acre/day for May 2012, 1,015.77 lbs/acre/day for June 2012, 1,023.10 lbs/acre/day for July 2012 and 1,281.39 lbs/acre/day for August 2012 [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TCEQ Permit No. WQ0004052000, Part IV. Conditions of the Permit, Application Rates].

2. Failed to report any effluent violation which deviates from the permitted limit by more than 40% in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the non-compliance events for the months of September, October, November and December 2011, and January, February, March, April, May, June, July and August 2012 [30 TEX. ADMIN. CODE § 305.125(1) and (9)(A) and TCEQ Permit No. WQ0004052000, Part VI. Standard Conditions, Monitoring Requirements No. 7(c)].

3. Failed to comply with permitted effluent limitations for pH. Specifically, Respondent reported a pH of 5.6 standard units ("s.u.") during November 2011 and a pH of 5.9 s.u. during May 2012 that did not meet the permitted pH range of 6.0 to 9.0 s.u. [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TCEQ Permit No. WQ0004052000, Part IV. Conditions of the Permit, Monitoring].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require Respondent to:

a. Within 30 days, submit the noncompliance notifications for the effluent violations which deviated from the permitted limit by more than 40% for the months of

**Executive Summary – Enforcement Matter – Case No. 46148**  
**Azteca Milling, L.P.**  
**RN102166758**  
**Docket No. 2013-0265-IWD-E**

September, October, November and December 2011, and January, February, March, April, May, June, July and August 2012;

b. Within 30 days, update the Facility's operational guidance and conduct employee training to ensure that all reporting procedures are properly accomplished, including reports for permitted application rates which deviate by more than 40% from the permitted limit; and

c. Within 180 days, submit written certification of compliance with permitted limits of TCEQ Permit No. WQ0004052000 and Ordering Provisions a. and b., including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current monthly application rates and effluent results, demonstrating at least three consecutive months of compliance with all permitted limits.

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Jill Russell, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-4564; Debra Barber, Enforcement Division, MC 219, (512) 239-0412

**TCEQ SEP Coordinator:** N/A

**Respondent:** Angel Tamez, Senior Vice President, Azteca Milling, L.P., 501 West Chapin Street, Edinburg, Texas 78541

**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

<b>DATES</b>	<b>Assigned</b>	18-Jan-2013	<b>PCW</b>	11-Mar-2013	<b>Screening</b>	31-Jan-2013	<b>EPA Due</b>	
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<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Azteca Milling, L.P.
<b>Reg. Ent. Ref. No.</b>	RN102166758
<b>Facility/Site Region</b>	1-Amarillo
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>		<b>No. of Violations</b>	4
<b>Enf./Case ID No.</b>	46148	<b>Order Type</b>	1660
<b>Docket No.</b>	2013-0265-IWD-E	<b>Government/Non-Profit</b>	No
<b>Media Program(s)</b>	Water Quality	<b>Enf. Coordinator</b>	Jill Russell
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$40,000
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	40.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$16,000
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Notes: Enhancement for two orders with denial of liability.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$1,062  
Approx. Cost of Compliance: \$10,400  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$56,000
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$56,000
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$56,000
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$11,200
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$44,800
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Screening Date 31-Jan-2013

Docket No. 2013-0265-IWD-E

PCW

Respondent Azteca Milling, L.P.

Policy Revision 3 (September 2011)

Case ID No. 46148

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102166758

Media [Statute] Water Quality

Enf. Coordinator Jill Russell

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	2	40%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 40%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for two orders with denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, &amp; 7) 40%

## &gt;&gt; Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 40%

Screening Date 31-Jan-2013

Docket No. 2013-0265-IWD-E

PCW

Respondent Azteca Milling, L.P.

Policy Revision 3 (September 2011)

Case ID No. 46148

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102166758

Media [Statute] Water Quality

Enf. Coordinator Jill Russell

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Commission on Environmental Quality ("TCEQ") Permit No. WQ0004052000, Part IV. Conditions of the Permit, Application Rates

Violation Description

Failed to maintain the biochemical oxygen demand (5-Day) ("BOD5") permitted application rate of 100 pounds per acre per day ("lbs/acre/day"). Specifically, the BOD5 application rates for this Facility from April 2012 through August 2012 exceeded the permitted limit and are reported as: 7,218.43 lbs/acre/day for April 2012, 1,106.73 lbs/acre/day for May 2012, 1,015.77 lbs/acre/day for June 2012, 1,023.10 lbs/acre/day for July 2012, and 1,281.39 lbs/acre/day for August 2012.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		X	
Potential			

Percent 15.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels protective of human health or environmental receptors.

Adjustment \$21,250

\$3,750

## Violation Events

Number of Violation Events 5

152 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$18,750

Five monthly events are recommended for the months of April, May, June, July and August 2012.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Extraordinary

Ordinary

N/A

Notes

Before NOV NOV to EDPRP/Settlement Offer

X	(mark with x)

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$18,750

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$1,036

Violation Final Penalty Total \$26,250

This violation Final Assessed Penalty (adjusted for limits) \$26,250

# Economic Benefit Worksheet

**Respondent** Azteca Milling, L.P.  
**Case ID No.** 46148  
**Reg. Ent. Reference No.** RN102166758  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	30-Sep-2011	25-Oct-2013	2.07	\$1,036	n/a	\$1,036

Notes for DELAYED costs

Estimated cost to determine the cause of noncompliance and take necessary corrective actions to maintain compliance with permitted application rates and effluent limits. Date required is the first month of noncompliance. The final date is the expected date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

**TOTAL**

\$1,036

Screening Date 31-Jan-2013  
Respondent Azteca Milling, L.P.  
Case ID No. 46148  
Reg. Ent. Reference No. RN102166758  
Media [Statute] Water Quality  
Enf. Coordinator Jill Russell  
Violation Number 2

Docket No. 2013-0265-IWD-E

PCW

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and TCEQ Permit No. WQ0004052000, Part IV. Conditions of the Permit, Application Rates

Violation Description Failed to maintain the BOD5 permitted application rate of 100 lbs/acre/day. Specifically, the BOD5 application rates for this Facility from September 2011 through March 2012 exceeded the permitted limit and are reported as: 397.63 lbs/acre/day for September 2011, 297.19 lbs/acre/day for October 2011, 497.83 lbs/acre/day for November 2011, 336.72 lbs/acre/day for December 2011, 633.05 lbs/acre/day for January 2012, 520.85 lbs/acre/day for February 2012, and 222.92 lbs/acre/day for March 2012.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			X	5.0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels protective of human health or environmental receptors.					0.0%

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 3 212 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$3,750

Three quarterly events are recommended for the quarters containing the months of September, October, November and December 2011 and January, February and March 2012.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$5,250

This violation Final Assessed Penalty (adjusted for limits) \$5,250

# Economic Benefit Worksheet

**Respondent** Azteca Milling, L.P.  
**Case ID No.** 46148  
**Reg. Ent. Reference No.** RN102166758  
**Media** Water Quality  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See Economic Benefit for Violation No. 1

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

Screening Date 31-Jan-2013

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PCW

Respondent Azteca Milling, L.P.

Policy Revision 3 (September 2011)

Case ID No. 46148

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102166758

Media [Statute] Water Quality

Enf. Coordinator Jill Russell

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 305.125(1) and (9)(A) and TCEQ Permit No. WQ0004052000, Part VI. Standard Conditions, Monitoring Requirements No. 7(c)

Violation Description

Failed to report any effluent violation which deviates from the permitted limits by more than 40% in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the non-compliance events for the months of September, October, November and December 2011, and January, February, March, April, May, June, July and August 2012.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

## Violation Events

Number of Violation Events 12

365 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$15,000

Twelve single events are recommended for the months of September, October, November and December 2011 and January, February, March, April, May, June, July and August 2012.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$15,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$26

Violation Final Penalty Total \$21,000

This violation Final Assessed Penalty (adjusted for limits) \$21,000

# Economic Benefit Worksheet

**Respondent** Azteca Milling, L.P.  
**Case ID No.** 46148  
**Reg. Ent. Reference No.** RN102166758  
**Media** Water Quality  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$250	14-Dec-2012	25-Oct-2013	0.86	\$11	n/a	\$11
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$150	5-Oct-2011	25-Oct-2013	2.06	\$15	n/a	\$15

### Notes for DELAYED costs

Estimated costs to prepare and submit the noncompliance notifications and for updating operational guidance and training of personnel so that all reporting procedures are properly accomplished, including procedures to ensure that written reports for effluent violations which deviate by more than 40% from the permitted application rates are properly submitted to TCEQ. For training costs, Date Required is the date of the record review and Final Date is the expected date of compliance. For other costs, Date required is the date that the first noncompliance notification was due. The Final Date is the expected date of compliance.

## Avoided Costs

### ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

### Notes for AVOIDED costs

Approx. Cost of Compliance

\$400

TOTAL

\$26

Screening Date 31-Jan-2013

Docket No. 2013-0265-IWD-E

PCW

Respondent Azteca Milling, L.P.

Policy Revision 3 (September 2011)

Case ID No. 46148

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102166758

Media [Statute] Water Quality

Enf. Coordinator Jill Russell

Violation Number 4

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and TCEQ Permit No. WQ0004052000, Part IV. Conditions of the Permit, Monitoring

Violation Description

Failed to comply with permitted effluent limitations, as documented during an investigation conducted on December 14, 2012. Specifically, the Respondent reported a pH of 5.6 standard units ("s.u.") during November 2011 and a pH of 5.9 s.u. during May 2012 that did not meet the permitted pH range of 6.0 to 9.0 s.u.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 5.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels protective of human health or environmental receptors.

Adjustment \$23,750

\$1,250

## Violation Events

Number of Violation Events 2

61 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

Two quarterly events are recommended for quarters containing the months of November 2011 and May 2012.

## Good Faith Efforts to Comply

0.0%

Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$3,500

This violation Final Assessed Penalty (adjusted for limits) \$3,500

# Economic Benefit Worksheet

**Respondent** Azteca Milling, L.P.  
**Case ID No.** 46148  
**Reg. Ent. Reference No.** RN102166758  
**Media** Water Quality  
**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See Economic Benefit for Violation No. 1.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



## Compliance History Report

**PUBLISHED** Compliance History Report for CN600127914, RN102166758, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

**Customer, Respondent, or Owner/Operator:** CN600127914, Azteca Milling, L. P. **Classification:** SATISFACTORY **Rating:** 7.20

**Regulated Entity:** RN102166758, DAWN CORN MILLING FACILITY **Classification:** SATISFACTORY **Rating:** 11.36

**Complexity Points:** 6 **Repeat Violator:** NO

**CH Group:** 14 - Other

**Location:** LOCATED ON THE WEST SIDE OF FARM-TO-MARKET ROAD 809, APPROXIMATELY 500 FEET NORTH OF THE INTERSECTION OF FARM-TO-MARKET ROAD 809 AND FARM-TO-MARKET ROAD 1062, DEAF SMITH COUNTY, TEXAS

**TCEQ Region:** REGION 01 - AMARILLO

**ID Number(s):**

**AIR NEW SOURCE PERMITS** PERMIT 37806 **AIR NEW SOURCE PERMITS** ACCOUNT NUMBER DD0067Q

**AIR NEW SOURCE PERMITS** AFS NUM 4811700023 **WASTEWATER** PERMIT WQ0004052000

**AIR OPERATING PERMITS** PERMIT 2806 **AIR OPERATING PERMITS** ACCOUNT NUMBER DD0067Q

**AIR EMISSIONS INVENTORY** ACCOUNT NUMBER DD0067Q

**Compliance History Period:** September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012

**Date Compliance History Report Prepared:** January 30, 2013

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** January 30, 2008 to January 30, 2013

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** Jill Russell **Phone:** (512) 239-4564

### Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

### Components (Multimedia) for the Site Are Listed in Sections A - J

#### **A.Final Orders, court judgments, and consent decrees:**

- 1 Effective Date: 02/18/2008 ADMINORDER 2007-1204-AIR-E (1660 Order-Agreed Order With Denial)  
Classification: Moderate  
Citation: 30 TAC Chapter 122, SubChapter B 122.145(2)  
5C THC Chapter 382, SubChapter D 382.085(b)  
Rqmt Prov:General Terms and Conditions OP  
Description: Failed to submit semi-annual deviation reports for Federal Operating Permit No. O-2806. As documented during an investigation conducted on June 14, 2007, semi-annual deviation reports for the period December 27, 2005 through June 26, 2006 and June 27, 2006 through December 26, 2006 were due by July 26, 2006 and January 26, 2007, respectively, but were not received until July 13, 2007.

Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.146(1)

5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov:General Terms and Conditions OP

Description: Failed to certify compliance with the terms and conditions of Federal Operating Permit No. O-2806 for at least each 12-month period following the initial issuance of the permit. As documented during an investigation conducted on

June 14, 2007, the annual compliance certification for the period December 27, 2005 to December 26, 2006 was due by January 26, 2007, but was not received until July 13, 2007.

2 Effective Date: 10/25/2010 ADMINORDER 2010-0662-AIR-E (1660 Order-Agreed Order With Denial)

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.115(c)

5C THSC Chapter 382 382.085(b)

Rqmt Prov:GC8 and SC1 PERMIT

Special condition 5 OP

Description: Failed to maintain emissions below the allowable emission limit of 5.17 pounds per hour for particulate matter with an aerodynamic diameter of 10 microns or less ("PM10"), as documented during an investigation conducted on February 12, 2010. Specifically, on October 12, 2009, a blockage of product flow resulted due to excessive moisture in the product plugging the airlock cyclone, Emissions Point No. 3, resulting in the release of 8.5 pounds of unauthorized PM10 over a four-minute period.

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**

Item 1	March 06, 2008	(615963)
Item 2	September 05, 2008	(701762)
Item 3	October 06, 2010	(850017)
Item 4	February 24, 2011	(894775)
Item 5	October 19, 2011	(962603)
Item 6	October 11, 2012	(1030920)

**E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

**F. Environmental audits:**

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
AZTECA MILLING, L.P.  
RN102166758**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2013-0265-IWD-E**

### **I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Azteca Milling, L.P. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a grain milling operation located on the west side of Farm-To-Market Road 809, approximately 500 feet north of the intersection of Farm-To-Market Road 809 and Farm-To-Market Road 1062, Deaf Smith County, Texas (the "Facility").
2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about January 30, 2013.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Fifty-Six Thousand Dollars (\$56,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Two Hundred Sixty Dollars (\$1,260) of the administrative penalty and Eleven Thousand Two Hundred Dollars (\$11,200) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Forty-Three Thousand Five Hundred Forty Dollars (\$43,540) of the administrative penalty shall be payable in 35 monthly payments of One Thousand Two Hundred Forty-Four Dollars (\$1,244) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to maintain the biochemical oxygen demand (5-Day) ("BOD5") permitted application rate of 100 pounds per acre per day ("lbs/acre/day"), in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TCEQ Permit No.

WQ0004052000, Part IV. Conditions of the Permit, Application Rates, as documented during a record review on December 14, 2012. Specifically, the BOD5 application rates for this Facility from September 2011 through August 2012 exceeded the permitted limit and are reported as: 397.63 lbs/acre/day for September 2011, 297.19 lbs/acre/day for October 2011, 497.83 lbs/acre/day for November 2011, 336.72 lbs/acre/day for December 2011, 633.05 lbs/acre/day for January 2012, 520.85 lbs/acre/day for February 2012, 222.92 lbs/acre/day for March 2012, 7,218.43 lbs/acre/day for April 2012, 1,106.73 lbs/acre/day for May 2012, 1,015.77 lbs/acre/day for June 2012, 1,023.10 lbs/acre/day for July 2012 and 1,281.39 lbs/acre/day for August 2012.

2. Failed to report any effluent violation which deviates from the permitted limit by more than 40% in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the non-compliance events for the months of September, October, November and December 2011, and January, February, March, April, May, June, July and August 2012, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (9)(A) and TCEQ Permit No. WQ0004052000, Part VI. Standard Conditions, Monitoring Requirements No. 7(c), as documented during a record review conducted on December 14, 2012.
3. Failed to comply with permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TCEQ Permit No. WQ0004052000, Part IV. Conditions of the Permit, Monitoring, as documented during a record review conducted on December 14, 2012. Specifically, the Respondent reported a pH of 5.6 standard units ("s.u.") during November 2011 and a pH of 5.9 s.u. during May 2012 that did not meet the permitted pH range of 6.0 to 9.0 s.u.

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Azteca Milling, L.P., Docket No. 2013-0265-IWD-E" to:

Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order, submit the noncompliance notifications for the effluent violations which deviated from the permitted limit by more than 40% for the months of September, October, November and December 2011, and January, February, March, April, May, June, July and August 2012 to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager  
Amarillo Regional Office  
Texas Commission on Environmental Quality  
3918 Canyon Drive  
Amarillo, Texas 79109-4933

- b. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that all reporting procedures are properly accomplished, including reports for permitted application rates which deviate by more than 40% from the permitted limit; and
- c. Within 180 days after the effective date of this Agreed Order, submit written certification of compliance with permitted limits of TCEQ Permit No. WQ0004052000 and Ordering Provision Nos. 2.a and 2.b, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current monthly application rates and effluent results, demonstrating at least three consecutive months of compliance with all permitted limits. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with permitted application rates and effluent limitations. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section Manager  
Amarillo Regional Office  
Texas Commission on Environmental Quality  
3918 Canyon Drive  
Amarillo, Texas 79109-4933



3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature

could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

A handwritten signature in black ink, consisting of a stylized 'J' followed by a horizontal line and a small flourish.

**SIGNATURE PAGE**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

\_\_\_\_\_  
For the Commission

  
For the Executive Director

7/1/13  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
Signature

4-22-2013  
Date

ANGEL TAMEZ  
Name (Printed or typed)  
Authorized Representative of  
Azteca Milling, L.P.

SR. VICE PRESIDENT  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.